



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 220216-0050]

RIN 0648-BK44

#### Atlantic Highly Migratory Species; Consistency Modifications and Corrections

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical corrections.

**SUMMARY:** This final rule makes editorial corrections to the regulations for Atlantic highly migratory species (HMS). This final rule corrects citations that are currently incorrect due to changes to references in other parts of the regulations. In addition, this final action corrects minor technical items in the regulations that are missing, inconsistent, or incorrect, and also clarifies extraneous language to make the regulations more readable. The rule is administrative in nature and does not make any change with substantive effect to the regulations for HMS fisheries.

**DATES:** This final rule is effective on *[insert date of publication in the Federal Register]*.

**ADDRESSES:** Documents related to HMS fisheries management, such as the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments, are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or upon request from the HMS Management Division by phone at 301-427-8503.

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**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

## **Background**

Since publishing the 2006 Consolidated HMS FMP, NMFS has amended the FMP 12 times through the fishery management plan amendment process and has made numerous other regulatory changes through framework actions. With this volume of regulatory action, in addition to changes in non-HMS fisheries regulations, inadvertent errors and inconsistencies have accumulated in the regulations and regulatory cross-references over time. This technical amendment corrects missing, inconsistent, or incorrect language, and clarifies extraneous language in the HMS regulations at 50 CFR part 635. It also corrects cross-references to regulations as appropriate.

## **Clarification Corrections**

This final action clarifies the HMS regulations as follows:

The regulation at § 635.4(a)(10) provides permit conditions for HMS permit holders. The regulation unintentionally omitted “Atlantic tunas” permits. Adding “Atlantic tunas” clarifies this regulation and removes any confusion for permit holders who hold multiple types of HMS permits. The associated rulemaking that established this requirement was the 2006 Consolidated HMS FMP (71 FR 58058; October 2, 2006).

The regulation at § 635.5(a)(4) currently states that owners permitted under the Atlantic Tunas General, Harpoon, or HMS Charter/Headboat categories must report

bluefin tuna discards in the NMFS electronic catch reporting system. This rule clarifies that they must report only dead discards, not live releases. The associated rulemaking that established this requirement was Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71509; December 2, 2014).

Several changes are being made at § 635.5(d) to remove and modify language to clarify the tournament operator requirements. Specifically, this final rule:

- Removes the redundant language, “HMS Management Division,” in two locations.
- Removes an excessive and unnecessary phrase (“...by submitting information on the purpose, dates, and location of the tournament to NMFS”) for clarity.
- Removes the sentence “NMFS will notify the tournament operator in writing when a tournament has been selected for reporting,” as this sentence is no longer needed due to a previous notice that notified the affected community that all tournaments are automatically selected for reporting (83 FR 63831; December 12, 2018).
- Removes the phrase “that are selected to report” because all Atlantic HMS tournaments are selected for reporting, which began on January 1, 2019. The associated notice for this requirement was published on July 17, 2018 (83 FR 33148).
- Adds the phrase “...details of the tournament catch and fishing activities, completing all required fields on the NMFS tournament summary report no later than 7 days after tournament fishing has ended” and removes the language “...a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules” to clarify the regulation language.

The associated rulemaking that established this requirement was the 2006 Consolidated HMS FMP (71 FR 58058; October 2, 2006). These removals and modifications provide further clarity to the regulation.

### **Typographical Corrections**

This final action corrects two typographical errors in the HMS regulations. The regulation at § 635.19(e)(1) does not capitalize the words “North” and “South.” This final action corrects this error and capitalizes “North” and “South.”

### **Consistency Corrections**

This final rule corrects the Atlantic Tunas General category permit name as it has been incorrectly cited in several locations. The regulations at §§ 635.22(a)(2) and (3) and 635.27(a)(1)(i), incorrectly cite the Atlantic Tunas General category permit name as “HMS General Category permit.” Correcting permit names would create consistency across the regulations. This final rule also removes the definition of Mid-Atlantic-Bight at § 635.2 because the definition is not referenced anywhere else in the part 635 regulations. In addition, this final rule corrects the regulations at § 635.21(d)(1)(iii)(D) Charleston Deep Artificial Reef, which left off one coordinate in the spawning Special Management Zones coordinate list. The associated rulemaking that established this requirement was published on July 17, 2018 (83 FR 33148).

### **Cross References Corrections**

This final action corrects the incorrect cross references found in the definitions and regulations at §§ 635.4(h)(1)(iv) and (n)(2) and 635.54. Section 635.4(h)(1)(iv) and (n)(2) incorrectly reference the *Illex* squid moratorium permit described at § 648.4(a)(5)(i). The correct cross reference should be § 648.4(a)(5)(ii). Section 635.54 incorrectly references that owners and operators of U.S. vessels are subject to inspection under § 635.23. The correct cross reference should be § 635.52.

### **Classification**

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Act, the objectives of the 2006 Consolidated HMS FMP and its amendments, ATCA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. This final rule makes only corrective, non-substantive changes to regulatory text, corrects cross-references to HMS and other regulations, removes unnecessary language in several instances, and is solely administrative in nature. Therefore, public comment is unnecessary and would delay necessary corrections that will help prevent potential confusion for the public.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, and a proposed rule is not being published, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action is purely administrative in nature by making editorial corrections or clarifications to existing regulatory text, with no substantive changes or effects.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,  
Reporting and recordkeeping requirements, Treaties

Dated: February 23, 2022.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

**§ 635.2 [Amended]**

2. In § 635.2, remove the definition for “Mid-Atlantic Bight.”

3. In § 635.4, revise paragraphs (a)(10), (h)(1)(iv), and (n)(2) to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(a) \* \* \*

(10) *Permit condition.* An owner of a vessel with a valid Atlantic tunas, swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel

fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in paragraph (h)(1) of this section, a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(ii) of this chapter.

\* \* \* \* \*

(n) \* \* \*

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(ii) of this chapter, and no commercial fishing gear other than trawl gear.

\* \* \* \* \*

4. In § 635.5, revise paragraphs (a)(4) and (d) to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(4) *Bluefin tuna discarded dead, or landed by a commercial vessel and sold.* The owner of a vessel that has been permitted or that is required to be permitted under § 635.4 in the Atlantic Tunas General or Harpoon categories, or has been permitted or is required to be permitted under § 635.4 under the HMS Charter/Headboat category and fishing under the General category quotas and daily limits as specified at § 635.23(c), must report all dead discards and/or landings of bluefin tuna through the NMFS electronic catch reporting system within 24 hours of the landings or the end of trip. Such reports

may be made by either calling a phone number designated by NMFS or by submitting the required information online to a website or application designated by NMFS. The owner of a vessel that has been permitted in a different bluefin tuna category must report as specified elsewhere in this section.

\* \* \* \* \*

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with NMFS at least 4 weeks prior to commencement of the tournament. A tournament is not registered unless the tournament operator has received a confirmation number from NMFS. Tournament operators must maintain and submit to NMFS details of the tournament catch and fishing activities, completing all required fields, on the NMFS tournament summary report no later than 7 days after the tournament has ended.

\* \* \* \* \*

5. In § 635.19, revise paragraph (e)(1) to read as follows:

**§ 635.19 Authorized gears.**

\* \* \* \* \*

(e) \* \* \*

(1) No person may possess North Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess South Atlantic swordfish taken from its management unit by any gear other than longline.

\* \* \* \* \*

6. In § 635.21, revise paragraph (d)(1)(iii)(D) to read as follows:



**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(D) *Charleston Deep Artificial Reef*. Bounded by rhumb lines connecting, in order, the following points: 32°05.04' N. lat. 79°13.575' W. long.; 32°9.65' N lat., 79°9.2' W. long.; 32°7.155' N. lat., 79°5.595' W. long.; 32°2.36' N. lat., 79°9.975' W. long.; 32°5.04' N. lat., 79°13.575' W. long.

\* \* \* \* \*

7. In § 635.22, revise paragraphs (a)(2) and (3) to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(a) \* \* \*

(2) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued an HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) may not retain, possess, or land oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess, or land swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

(3) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued a Swordfish General commercial permit under § 635.4(f) that are participating in an HMS registered

tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel during that trip.

\* \* \* \* \*

8. In § 635.27, revise the introductory text of paragraph (a)(1)(i) to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Catches from vessels for which Atlantic Tunas General category permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 555.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

\* \* \* \* \*

9. In § 635.54, revise the introductory text to read as follows:

**§ 635.54 Reports.**

Owners and operators of U.S. vessels subject to inspection under § 635.52 are hereby notified that the ICCAT recommendation establishing a scheme for minimum standards for inspection in port requires that:

\* \* \* \* \*

